IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ANTHONY CAUDILL,	:	APPEAL NO. C-090530
		TRIAL NO. SP-0900022
Petitioner-Appellant,	:	
		JUDGMENT ENTRY.
vs.	:	
STATE OF OHIO,	:	
Respondent-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In Kenton County, Kentucky, in 2000, petitioner-appellant Anthony Caudill pleaded guilty to and was convicted of sexual abuse in the first degree. He was ordered to register under Kentucky law as a sex offender for ten years. Caudill subsequently moved to Ohio.

Caudill received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 ("Senate Bill 10") as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. Caudill filed an R.C. 2950.031(E) petition to contest his reclassification, challenging the constitutionality of Senate Bill 10. He also filed an R.C. 2950.11(F)(2) motion for immediate relief from the community-notification provisions. After a hearing, the trial court overruled Caudill's constitutional challenges to Senate Bill 10. The parties agreed

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

that Caudill had been incorrectly classified as a Tier III offender. The trial court found that Caudill's correct classification was a Tier I offender. As a Tier I offender, Caudill is required to register annually for 15 years, but he is not subject to community notification.

Caudill's first assignment of error, which alleges that the retroactive application of Senate Bill 10's tier-classification and registration requirements violates the constitutional ban on ex post facto laws, is overruled.

"The Ex Post Facto Clause applies only to criminal statutes."[2] We held in *Sewell v. State*[3] that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws.

Caudill's second, third, and fourth assignments of error are overruled because the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution, the Double Jeopardy Clause of the Ohio Constitution, or the separation-of-powers doctrine.[4] Caudill's arguments under the United States Constitution are also overruled on *Sewell's* reasoning.

Caudill's fifth assignment of error is overruled. Caudill has no standing to challenge Senate Bill 10's residency restriction because he has not shown that he lives in or owns property within the restricted area or that he has been forced to move outside

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[2] See *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570, citing *California Dept. of Corrections v. Morales* (1995), 514 U.S. 499, 504, 115 S.Ct. 1597, and *Collins v. Youngblood* (1990), 497 U.S. 37, 43, 110 S.Ct. 2715.
[3] 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995.
[4] Id.

the restricted area.[5] We note that the Ohio Supreme Court held in *Hyle v. Porter*[6] that because the residency restriction in former R.C. 2950.031 was not expressly made retrospective, it could not be applied to an offender who had bought his home and committed his offense before the effective date of the statute.

Caudill's sixth and seventh assignments of error, which allege that reclassifying him under Senate Bill 10 constituted a breach of his plea agreement and an impairment of an obligation of contract, in violation of Section 28, Article II of the Ohio Constitution and Clause I, Section 10, Article I of the United States Constitution, are overruled.[7] The retroactive application of Senate Bill 10's tier-classification and registration requirements to a sex offender who pleaded guilty to a sexually-oriented offense pursuant to a plea bargain does not violate the Contract Clause of the Ohio and United States Constitutions, because when the offender entered his plea he had no reasonable expectation that his sex offense would never be made the subject of future legislation and no vested right concerning his registration duties.[8] Senate Bill 10's tier-classification and registration requirements are remedial, collateral consequences of the underlying criminal sex offense, and they do not affect a plea agreement previously entered between the state and the offender.[9]

The eighth assignment of error, alleging that the retroactive application of Senate Bill 10's registration requirements constitutes cruel and unusual punishment, is

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[5] See *State v. Randlett*, 4th Dist. No. 08CA3046, 2009-Ohio-112; *State v. Swank*, 11th Dist. No. 2008-L-019, 2008-Ohio-6059; *State v. Duncan*, 3rd Dist. No. 7-08-03, 2008-Ohio-5830.

[6] 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.

[7] Judge Hendon agrees that the sixth and seventh assignments of error are without merit not for the reasons given in the body of this judgment entry, but because there is no evidence in the record that Caudill's registration requirement was a term of any plea agreement.

[8] See *White v. State*, 1st Dist. No. C-090177, 2010-Ohio-234; *Burbrink v. State*, 1st Dist. No. C-081075, 2009-Ohio-5346.

[9] See id.

overruled because the statutes are civil and remedial, not punitive.[10] Therefore, the

registration requirements cannot be viewed as punishment.[11]

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate,

which shall be sent to the trial court under App.R. 27. Costs shall be taxed under

App.R. 24.

CUNNINGHAM, P.J., SUNDERMANN and **HENDON, JJ.**

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010

per order of the Court _____.

Presiding Judge

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[10] See *Sewell v. State*, supra, at fn. 3.
[11] See id.; *State v. Williams*, 12th Dist. No. CA2008-02-029, 2008-Ohio-6195; *State v. Byers*, 7th Dist. No. 07 CO 39, 2008-Ohio-5051.